

SUPREME COURT OF NEBRASKA

Young v. Midwest Family Mut. Ins. Co., 272 Neb. 385

722 N.W.2d 13 (2006) · No. S-05-540 · Decided September 29, 2006

SUMMARY

The Nebraska Supreme Court held that written settlement offers made by an insurer were not equivalent to offers to allow judgment under Neb. Rev. Stat. § 25-901. Because the insurer did not make qualifying offers to allow judgment, the statute did not preclude the insureds from seeking attorney fees under § 44-359. The court reversed and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Connolly, J.; Wright, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	September 29, 2006
DOCKET	S-05-540
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Youngs appealed the district court's denial of their request for attorney fees under Neb. Rev. Stat. § 44-359 after a jury returned a verdict in their favor on their breach-of-insurance-contract claim.
STANDARD OF REVIEW	Statutory interpretation and questions of law are reviewed independently, with the appellate court reaching an independent, correct conclusion irrespective of the lower court's determination.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Jennie L. Young, Thomas J. Young v. Midwest Family Mutual Insurance Company

TOPICS

- insurance
- attorney fees
- statutory interpretation
- plain meaning rule
- appellate procedure

PRACTICE AREAS

- insurance law
- civil procedure
- statutory interpretation
- attorney fees
- appellate procedure

QUESTIONS PRESENTED

1. Whether written settlement offers that do not expressly offer to allow judgment constitute offers to allow judgment under Neb. Rev. Stat. § 25-901.
2. Whether Midwest's settlement offers barred the Youngs from recovering attorney fees under Neb. Rev. Stat. § 44-359.
3. Whether the district court erred by denying the Youngs' attorney-fee request.

HOLDINGS

1. A written settlement offer is not equivalent to an offer in writing to allow judgment under Neb. Rev. Stat. § 25-901. To invoke the statute's protection, the offer must expressly comply with the statutory requirement of offering to allow judgment against the defendant.
2. Because Midwest did not make an offer to allow judgment as required by § 25-901, that statute did not preclude the Youngs from pursuing attorney fees otherwise available under § 44-359.

KEY QUOTATIONS

“An offer of judgment is not the same as an offer to settle.” (16)

“Section 25-901 is clear-it applies to offers to allow judgment against a defendant, which, under the plain meaning of the statute, are not equivalent to settlement offers.” (17)

FACTUAL BACKGROUND

Midwest's homeowners policy covered the Youngs' home, which sustained hail damage in April 2001. Midwest estimated the damage at \$790 and paid \$561.02 after the deductible, while the Youngs claimed approximately \$27,500 in damages. During the resulting breach-of-contract litigation, Midwest made four written settlement offers, none of which expressly offered to allow judgment against Midwest. The Youngs rejected the offers, proceeded to trial, and obtained a \$940 jury verdict.

PROCEDURAL HISTORY

The Youngs sued Midwest for breach of their homeowners insurance policy after hail damaged their home. After a jury awarded the Youngs \$940, they sought attorney fees under § 44-359. The district court denied fees, concluding that Midwest's written settlement offers satisfied Neb. Rev. Stat. § 25-901 and barred recovery of fees. The Nebraska Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings, including consideration of the Youngs' opportunity to pursue attorney fees under § 44-359.

CASES CITED

- Genthon v. Kratville, 270 Neb. 74, 701 N.W.2d 334 (2005)
- Wendt v. Cavalier Ins. Corp., 197 Neb. 622, 250 N.W.2d 243 (1977)
- Haberkorn v. Chrysler Corp., 210 Mich. App. 354, 533 N.W.2d 373 (1995)
- B & H Const. v. Tallahassee Community College, 542 So. 2d 382 (Fla. App. 1989)
- Becker v. DeLeone, 78 Or. App. 530, 717 P.2d 1185 (1986)
- 24th & Dodge Ltd. Part. v. Acceptance Ins. Co., 269 Neb. 31, 690 N.W.2d 769 (2005)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/nebraska-supreme-court-of-nebraska/2006/young-v-midwest-family-mut-ins-co-272-neb-385-ic7pemhj>